IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2806 of 1998

Date of decision : 04-02-2004

BASHIRBHAI R KHILJI

Versus

UNION OF INDIA

Coram :

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice Sharad D Dave, Judge

Whether approved for reporting ?

For the Appellant :

Mr.P.H.Pathak
Adv.

PER : BHAWANI SINGH, CHIEF JUSTICE (ORAL) :

Bashirbhai R Khilji (petitioner) was selected and appointed armed constable in Central Reserve Police Force (CRPF). He was posted at Amritsar (Punjab) in the Anti-terrorist squad. Thereafter, he was posted at Srinagar (Jammu & Kashmir) for the protection of citizens against terrorists. While on duty, due to heavy snowfall in Srinagar, he suffered from Pyogenimeningtile and Senserineural deafness (bylateral). Consequently, he was referred to S.M.N.S.hospital and admitted there from 19.01.1990 to 14.02.1990, Station Hospital, Bantalab from 21.02.1990 to 07.03.1990 and BASE Hospital-I, New Delhi

---

Whether reporters of Local Papers may be allowed to see

the Judgment ?

and A.I.I.M.S., New Delhi from 17.03.1990 to 16.04.1990 for investigation and treatment where he was diagnosed as a patient of `Pyogenic Meningities with B.I.Sensonery Deafness'. Despite medical treatment at various hospitals, the petitioner could not be cured and he was declared unfit for active duty. His case was referred for consideration whether he could do alternative job. However, his case was rejected as he was found unfit for any alternative job due to complete loss of hearing power in both ears. Finally, he was invalidated from service from 01.07.1991 (FN) vide Office Order No.P-III-44/91-Pen(IP) dated 27.06.1991 of GC, CRPF, Gandhinagar (Gujarat).

The petitioner sought invalid pension but his case has been rejected on the ground that he had not completed qualifying service of ten years. He has been given service gratuity of Rs. 4,140/- apart from a recurring payment of Rs.1,000/- p.m. from Risk Fund for his life vide order dated 12.12.1991. The petitioner filed S.C.A.no.12432/94 in this Court for invalid pension. By order dated 28.02.1996, the respondents were directed to consider the representation of petitioner for separate pension in accordance with rules, and bear in mind the petitioner's case about his separate entitlement to invalid pension as distinct from the entitlement from the risk fund. If the entitlement from the risk fund is the same as invalid pension, reasoned order be passed in that respect after considering the matter from all points of view. Pursuant to this direction, respondents considered the case and passed order dated 25.04.1996 rejecting the claim of petitioner. That apart, a representation with regard to recovery of Rs.22,231/- has also been rejected, and this amount is sought to be recovered on the ground that petitioner has been over paid with respect to the period he remained under treatment and medical examination. Therefore, this is second round of litigation. The petitioner submits that he is entitled to invalid pension, which is distinct from other pensions admissible to a person holding pensionable post. Respondents submit that petitioner is not entitled because he has not served for minimum period of ten years. Both parties submit that Central Civil Services (Pension) Rules, 1972 are applicable to this case. That being so, Chapter-V deals with classes of pensions and conditions governing their grant. Rules 35 to 41 deal with Superannuation pension, Retiring pension, pension on absorption in or under a corporation, company or body, payment of lump sum amount to persons on absorption in or under a corporation, company or body, invalid pension,

compensation pension, compulsory retirement pension and compassionate allowance respectively. We may quote Rule 38.

"38. Invalid pension-(1) Invalid pension may be granted if a Government servant retires from the srvice on account of any bodily or mental infirmity which permanently incapacitates him from the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority namely :-

(a) a Medical Board in the case of a Gazetted Government servant and of non-Gazetted Government servant whose pay, as defined in Rule 9(21) of the Fundamental Rules, exceed (two thousand and two hundred rupees) per mensem ;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases."

Perusal of Chapter V demonstrates that different kinds of pensions are envisaged under Central Civil Services (pension) Rules, 1972, one such being invalid pension which the petitioner is claiming. This pension can be granted if a government servant retires from service on account of any bodily or mental infirmity which permanently incapacitates him from the service. There is no doubt about the petitioner's disability being 100%, settled and decided by the Medical Board, which examined him at the instance of the competent authority. It is on the report of the Medical Board that petitioner is declared invalid and retired from service. Invalidity is to the extent that he has not been found suitable for any other alternative appointment. Invalidity pension is therefore, distinct from other kinds of pension and is admissible independently. Requirement of minimum qualified service of ten years is not applicable to the person who claims invalidity pension because invalidity can surmount a person at any stage of the service. It would be hard and harsh to deprive a person from invalid pension on the ground that he should put in minimum ten year service to become entitled for this pension. It is not in Rule 38 which being plain and clear so cannot be read in it, thereby causing not only violence to it but also making it suffer the indictment of unreasonableness and arbitrariness. This requirement may be reasonable in case of other pensions, but unreasonable in case of a

person claiming pension on the ground of invalidity, which grips him in conditions over which he has no control. Petitioner is a dedicated youthful jawan of Central Reserve Police Force. After selection, he was posted in Punjab in the Anti-terrorist squad, since Punjab was passing through abnormal phase of militancy, understandable to everyone. Thereafter, state of Jammu & Kashmir was gripped by serious militancy conditions, which started in December, 1989. Petitioner is shifted to Jammu & Kashmir to deal with the militancy operations. Persons who has not visited/lived in state of Jammu & Kashmir during December 1989-2000 may not understand and appreciate the extremely serious conditions of militancy through which the State was passing, but it is understandable to those who have served there how difficult it was to the people to live/serve there, more so, the army and paramilitary forces engaged to counter the militancy, which then was of general nature in which thousands of soldiers and paramilitary forces/officers and jawans died. Again to deal with in extremely cold weather, of December, January, February is all the more difficult and beyond comprehension, when temperature dips to minus 18 CTG and in some places -48 CTG sometimes. The petitioner suffered during this period due to extreme cold climate conditions. He was treated at various hospitals for period recorded herein before, therefore, rendered invalid 100% and boarded out of the service with small amount of gratuity and Rs.1,000/- per month out of the Risk Fund. Rules provide for invalid pension. That apart, he deserves to be treated with extreme compassion since he also served the nation with extreme dedication in extremely difficult conditions.

We have no difficulty in coming to the conclusion that petitioner is entitled to invalid pension and the respondents should assess the same admissible from time to time and pay him.

The order of recovery is beyond comprehension for periods petitioner was under treatment and medical examination. At this time, he had not been boarded out of the service. Therefore, it has to be borne by the respondents and not by the petitioner.

No other point was urged.

What emerges from the aforesaid discussion is that the petitioner is entitled to invalid pension, which may be calculated in accordance with rules and paid to him within three months along with interest @ 9% from 01.09.1991 (leaving two months being normal period for

calculation of pension). The order for recovery is quashed. Petitioner will also be entitled to cost of Rs.1,000/-.

(BHAWANI SINGH)
Chief Justice

(SHARAD D DAVE)
Judge
srilatha